IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1241 OF 2001

Ashok Chhabildas of Mumbai, Indian residing at E-19, Sicka Nagar, V.P. Road, Mumbai - 400 004 and carrying on business in the name and style of M/s.A.V.Impex as sole Proprietor and having his office at 22, Belvedere Road, Mazgaon, Mumbai-400 010. ..Petitioner.

V/s.

1) The Union of India, through the Joint Secretary, Ministry of Law, Justice and Company Affairs, Aayakar Bhavan, M.K. Road Churchgate,Mumbai-400 020.

2) The Commissioner of Customs (Imports) New Customs House, Ballard Estate, Mumbai-400 038.

3) The Customs, Excise and Gold (Control), Appellate Tribunal, West Zonal Bench, situated at PNB House, 3rd floor, Sir P.M. Road, Mumbai - 400 001. ..Respondents.

Mr.Y.T.John, Advocate i/b.Anil Balani for the petitioner.

Mr.A.S.Rao, Advocate for the respondents.

CORAM : S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 17TH FEBRUARY, 2005.

ORAL JUDGMENT (PER J.P. DEVADHAR, J.)

1. By this petition, the petitioner challenges the order of CEGAT dated 19/1/2001, wherein while confirming the order in original dated 11/8/1994, the Tribunal has reduced the personal penalty levied against the petitioner under section 112(a) of the Customs Act, 1962 from Rs.10 lakhs to Rs.7.5 lakhs. According to the petitioner, he is not involved in any illegal importation and merely because he had signed some documents in good faith to help his friend Vinodkumar Jatia, the petitioner ought not to be saddled with penalty and in any event, the personal penalty sustained by the Tribunal at Rs.7.5 lakhs is unduly harsh and excessive.

2. Facts having a bearing on the subject matter of the present petition are that two consignments of low carbon mild steel defective sheets / coils weighing 179.860 MTs. and 205.779 MTs. were imported vide vessel ‘KRANJ’ under two bills of lading both dated 15.9.1989. As per the IGM, the said goods were shipped from Yokohama, Japan and were to be discharged at Mumbai and the consignee shown therein was M/s.Punjab & Sind Bank, Bombay or "To order".

3. On 11th December, 1989 two warehousing bills of entry were presented on behalf of M/s.A.V.Impex in respect of the above two consignments. Along with the bills of entry, invoices from the foreign shipper and declaration

under Rule 10 of the Customs Valuation Rules, 1988 for both the consignments signed on behalf of M/s.A.V.Impex were furnished. Subsequently, by a letter dated 8/3/1990 M/s.A.V.Impex forwarded 20 transferred REP licences in order to obtain clearance of the aforesaid goods.

4. In view of the discrepancy in the quantity and the price noticed from the documents furnished, the matter was taken up for investigation and statements of various persons were recorded. Petitioner in his statement recorded under section 108 of the Customs Act on 26/8/1991 stated that although he had signed some documents as proprietor of M/s.A.V.Impex, he was not aware about the existence of that firm. He stated that some time in November / December, 1989 he was informed by his friend Mr.Vinodkumar Jatia that he (Jatia) had imported some defective cold rolled sheets in the name of M/s.A.V.Impex with petitioner’s address for the clearance of the goods through customs. Petitioner stated that some documents, blank printed forms and letterheads were signed by him at the instance of Mr.Vinodkumar Jatia who had assured the petitioner that there is nothing wrong in signing such documents. Petitioner further stated that although a bank account was opened in the name of the petitioner as proprietor of M/s.A.V.Impex in Punjab & Sind Bank, the petitioner has never operated the said bank account. The

petitioner admitted that he had signed importer's declaration and declaration under Rule 10 of the Customs Valuation Rules, however, stated that all further actions were done by Mr.Jatia and the petitioner was not concerned with it.

5. On 1/9/1993 a show cause notice was issued to all the persons concerned including the petitioner, under section 124 of the Customs Act, 1962 calling upon them to show cause as to why the imported goods should not be confiscated for misdeclaration of quantity and value and why personal penalty should not be levied against the persons named therein. After hearing all the parties, the Collector of Customs by his order dated 11/8/1994 held that the imported goods were liable for confiscation under section 111 (d), (l) & (m) of the Customs Act, 1962. As the goods were not physically available for confiscation as they had been disposed of by the custodian the B.P.T., the collector of Customs ordered confiscation of the sale proceeds of the said goods disposed of by the B.P.T. and imposed penalties under section 112(a) of the Customs Act of several persons as more particularly set out therein. The petitioner was one such person on whom personal penalty of Rs.10 lakh was imposed by the Collector of Customs.

6. On appeal filed by the petitioner, CEGAT, by its order dated 19th January, 2001 upheld the order passed by the Collector of Customs, however, the Tribunal reduced the personal penalty from Rs.10 lakhs to Rs.7.5 lakhs. Challenging the said order, the present petition is filed.

7. Mr.Y.T.John, learned counsel appearing on behalf of the petitioner submitted that in the present case the goods have been confiscated for misdeclaration of value and weight. He submitted that the petitioner had signed the declaration in good faith which was later pasted to the bills of entry by Mr.Jatia. All the signatures either on the letterheads or on the bank account opening forms were made by the petitioner in good faith. The petitioner had no knowledge that the bills of entry to which the declarations would be pasted would contain wrong and inaccurate values and weights. He submitted that it is nobody case that the petitioner had any knowledge of value and weight shown in the bills of entry. He submitted that in fact all the evidence on record show that the petitioner was unaware of any misdeclaration. Similarly, the petitioner did not know anything about the requirement of the import licences to clear the goods in question which were ultimately confiscated. Accordingly, the counsel submitted that the petitioner did not commit any act which rendered the goods liable for confiscation. In

other words, it was submitted that the act / omission of the petitioner was not conscious or with knowledge to commit any illegality under the Customs Act.

8. Counsel for the petitioner further submitted that having set aside the penalty levied on the customs house agents the Tribunal ought to have set aside the penalty levied against the petitioner also for the very same reasons. Counsel for the petititoner submitted that admittedly and undisputedly, Mr.Vinodkumar Jatia was the mastermind in the present case and the petitioner was entangled only on account of his immaturity. Yet, equal penalties are imposed both on Mr.Vinodkumar Jatia and the petitioner. Learned counsel submitted that out of Rs.7.5 lakhs, the petitioner has already deposited Rs.5 lakhs and, therefore, looking to the role of the petitioner and in the alternative, counsel for the petitioner submitted that the penalty levied against the petitioner be substantially reduced.

9. Mr.Rao, learned counsel appearing on behalf of the respondents supported the order passed by the authorities below.

10. Having heard counsel on both sides, we are of the opinion that there is no merit in the contentions raised

on behalf of the petitioner. Admittedly, the petitioner had signed the declaration as proprietor of M/s.A.V.Impex. In his statement recorded under section 108 of the Customs Act on 26/8/1991 the petitioner has admitted that since Mr.Vinodkumar Jatia was his personal friend for the past about 20 years, he had signed the printed forms and some letterheads in the name of M/s.A.V.Impex in good faith without asking for details from Mr.Vinodkumar Jatia. At the relevant time, the petitioner was about 32 years old and was carrying the business of trading in minerals and chemicals. When the petitioner signed the declaration on the Bill of Entry as a proprietor of M/s.A.V.Impex he new fully well that the declaration was with a view to seek clearance of the imported goods as proprietor of M/s.A.V. Impex, although he was not actually carrying on the business in the name of M/s.A.V.Impex. Thus, the petitioner wanted to assit Mr.Jatia to clear the goods in the name of any entity which was not in existence. Moreover, admittedly the petitioner opened a bank account in the name of M/s.A.V.Impex in Punjab & Sind Bank. It may be that the petitioner has not operated the said bank account but the fact that the petitioner agreed to lend his name for opening of a bank account in the name of M/s.A.V.Impex clearly shows that the said account was opened with a view to facilitate clearance of the goods as if M/s.A.V.Impex was in existence, when in fact the

petitioner was not carrying on business in the name of M/s.A.V.Impex. Apart from that, the petitioner has also admittedly signed blank letterheads so as to enable Mr.Vinodkumar Jatia to mislead the customs authorities that M/s.A.V.Impex is actually in existence when in fact, it was not. In these circumstances, the conduct of the petitioner who had actively connived with Mr.Vinodkumar Jatia to facilitate clearance of the goods in the name of a non existent entity is highly deplorable. The fact that all the subsequent acts such as addressing letters to the customs authorities and operating bank accounts in the name of M/s.A.V.Impex was carried out by Mr.Vinodkumar Jatia, does not absolve the petitioner to pay penalty for the offence committed by him. Acts committed by the petitioner which are on the face of it are illegal and with a view to mislead the customs department cannot be said to be committed in good faith. The fact that CHA has been absolved of penal charges and the fact that Mr.Vinodkumar Jatia has also been imposed fine of Rs.7.5 lakhs cannot be a mitigating circumstances to reduce the penalty levied against the petitioner, especially when the petitioner had signed documents in the name of an entity which was not in existence.

11. For all the aforesaid reasons, we see no reason to interfere with the order impugned in the petition.

12. Accordingly, petition fails. Rule is discharged. However, there will be no order as to costs.

sd/-

(S.RADHAKRISHNAN, J.)

sd/-

(J.P. DEVADHAR, J.)